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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1962

No. ~~230~~ 27

DAVID J. VANN and ROBERT S. VANCE, Appellants,

versus

BETTYE FRINK, Secretary of State of the State of Alabama; HARRELL HAMMONDS, Judge of Probate of Lowndes County, Alabama; JOHN A. SANKEY, Judge of Probate of Montgomery County, Alabama; J. PAUL MEEKS, Judge of Probate of Jefferson County, Alabama; JOHN GRENIER, Chairman of the Alabama State Republican Executive Committee; PERRY O. HOOPER, Secretary of the Alabama State Republican Executive Committee; H. G. RAINS, Secretary of the Alabama State Democratic Executive Committee; MacDONALD GALLION, Attorney General of the State of Alabama; ROY MAYHALL, Chairman of the Alabama State Democratic Executive Committee, Appellees.

On Appeal from the United States District Court for the Middle District of Alabama, Northern Division.

BRIEF

Opposing Amended Motion to Dismiss or Affirm.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1962.

No. 540.

DAVID J. VANN and ROBERT S. VANCE, Appellants,

versus

BETTYE FRINK, Secretary of State of the State of Alabama; HARRELL HAMMONDS, Judge of Probate of Lowndes County, Alabama; JOHN A. SANKEY, Judge of Probate of Montgomery County, Alabama; J. PAUL MEEKS, Judge of Probate of Jefferson County, Alabama; JOHN GRENIER, Chairman of the Alabama State Republican Executive Committee; PERRY O. HOOPER, Secretary of the Alabama State Republican Executive Committee; H. G. RAINS, Secretary of the Alabama State Democratic Executive Committee; MacDONALD GALLION, Attorney General of the State of Alabama; ROY MAYHALL, Chairman of the Alabama State Democratic Executive Committee, Appellees.

On Appeal from the United States District Court for the Middle District of Alabama, Northern Division.

BRIEF

Opposing Amended Motion to Dismiss or Affirm.

These appellants are unable to ascertain from the caption of the Amendment by Sims et al. to their Motion to Dismiss or Affirm whether the same was filed in this appeal or whether the movants are properly before the Court as parties in this appeal. The following argument opposing said amended motion is submitted for consideration only in the event that such questions are due to be answered in the affirmative.

ARGUMENT.

As to this particular appeal, the sole ground for dismissal or affirmation advanced in the Amendment to the Motion to Dismiss or Affirm is the alleged non-compliance by these appellants with Rule 15 (g) of the Revised Rules of the Supreme Court. Such ground necessarily rests on the contention that the decree from which this appeal was taken was only an interlocutory injunction. It was with finality, however, that the District Court rendered its declaratory judgment holding the previous apportionment of the Legislature of Alabama, a newly enacted reapportionment act and a proposed amendment to the Alabama Constitution of 1901, all to be violative of the Fourteenth Amendment. By injunction, it placed into effect its plan of reapportionment under which the State of Alabama will be governed for some indefinite future time. The District Court's retention of jurisdiction does not detract from the finality of those actions. It is a fairly common practice in equity to reserve certain matters for future adjustment and relief while making a final decree. It is also true that a final decree is not necessarily the ultimate decision which completely terminates a proceeding. (See e. g., 13 **Cyclopedia of Federal Procedure**, 3rd Edition, §57.20, page 126; **Cohen v. Beneficial Industrial Loan Corp.**, 337 U. S. 541). Both as to matters included and omitted, the District Court's declaratory judgment and injunction constituted a final decree within the meaning of this Court's rules.

The finality of the decree below is not of significant interest in the instant appeal, however, because it is manifestly clear that these appellants have fully complied with this Court's rules applicable both to interlocutory and final decrees. The court below rejected the application of population standards for the upper house of the Legislature of Alabama. This appeal presents the contention that both with respect to its declaratory action and the

injunctive orders issued pursuant thereto, the decree of the District Court perpetuates invidious discrimination in direct violation of the Fourteenth Amendment. The showing demanded by Rule 15 (g) is implicit in such a contention. Compliance with the rule does not depend on a ritualistic quotation of its wording. If the citizens of the more populous counties of Alabama are to be denied a hearing on their right to Equal Protection of Laws, such denial should be grounded on more substantial stuff than movants' single contention here.

CONCLUSION.

Appellants respectfully submit that the contention of non-compliance with Rule 15 (g) is frivolous and urge that probable jurisdiction be noted and the case advanced to the argument calendar for full consideration.

Respectfully submitted,

.....
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.....
C. H. ERSKINE SMITH,
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Birmingham, Alabama,
Attorneys for Appellants.

Proof of Service.

I, ..., an agent for the appellants herein, depose and say that on the .... day of

December, 1962, I served copies of the foregoing Brief Opposing Amended Motion to Dismiss or Affirm on each of the appellees herein and on each of the parties in the court below, by mailing copies via U. S. Mail in duly addressed envelopes with airmail postage prepaid, to their respective attorneys of record or, if none, to them personally as follows:

1. On Hon. MacDonald Gallion, Attorney General of Alabama, Montgomery, Alabama, Attorney of Record for himself and for Hon. Bettye Frink.

2. On Boswell and Smith, Geneva, Alabama, Attorneys of Record for Judge Harrell Hammonds.

3. On Judge John A. Sankey, Court House, Montgomery, Alabama.

4. On Judge J. Paul Meeks, Court House, Birmingham, Alabama.

5. On Hon. John Grenier, Comer Building, Birmingham, Alabama.

6. On Hon. Perry O. Hooper, Washington Building, Montgomery, Alabama.

7. On Roy D. McCord, Esquire, Gadsden, Alabama, Attorney for Hon. H. G. Rains.

8. On Hon. Roy Mayhall, Court House, Jasper, Alabama.

9. On Charles Morgan, Jr., Esquire, Bank for Savings Building, Birmingham, Alabama, Attorney for original plaintiffs.

10. On John W. McConnell, Jr., Esquire, 1101 Merchants National Bank Building, Mobile, Alabama, Attorney for intervening plaintiffs McConnell et al.

11. On Cooper, Mitch & Crawford, Bank for Savings Building, Birmingham, Alabama, Attorneys for intervening plaintiffs Farr et al.

12. On Thomas G. Gayle, Esquire, 1104½ Water Avenue, Selma, Alabama, Attorney for appellant Reynolds.

13. On Rankin Fite, Esquire, Hamilton, Alabama, Attorney for appellant Pearce.

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Subscribed and sworn to before me this .... day of December, 1962.

.....
Notary Public.